

P. N. MARTIN

IBLA 81-877

Decided June 8, 1982

Appeal from a decision of the Nevada State Director, Bureau of Land Management, denying a protest against wilderness study area designation of certain land in inventory unit NV-030-102.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

An appellant seeking reversal of a decision to include land in a Wilderness Study Area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

2. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherry systems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

3. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

It is not proper to exclude land from a wilderness study area merely because there has been no consideration of its potential mineral value. The mineral potential of any tract is to be considered

in the study phase rather than the inventory phase of the wilderness review process in order to move more carefully to determine the effect of a permanent wilderness designation on such values.

4. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

A wilderness study area designation will not be overturned on appeal on the basis of an appellant's claim that roads exist in the area, in the absence of allegations that mechanical improvements or mechanical maintenance has taken place on such routes.

APPEARANCES: P. N. Martin, pro se; Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

P. N. Martin appeals from a decision of the Nevada State Director, Bureau of Land Management (BLM), dated March 2, 1981, denying his protest requesting the deletion of certain land from the Clan Alpine Mountains wilderness study area (WSA). NV-030-102. The designation of this unit was published in the Federal Register on November 7, 1980, 45 FR 74070.

The State Director's designation of this land as a WSA was made pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). After such review, the Secretary is required from time to time to report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected

primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The review process undertaken by the Nevada State Office pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. The State Director's announcement of WSA designations marks the end of the inventory phase of the review and the beginning of the study phase.

Martin specifically protests the inclusion of areas around Florence and Starr Canyons as not qualifying for further studies. ^{1/} Appellant notes that there are mining claims in the area, that new roads and mining activities have been conducted since 1957 at varying degrees of intensity. Appellant also cites certain impacts dating from the turn of the century. Appellant contends that this is an area of mineralization, and he is disconcerted by "the lack of such consideration as to the obvious mineralized areas and the potential for minerals" (Statement of Reasons p. 2). Appellant also criticizes the practice of "cherry-picking" by which the boundary of a wilderness area is drawn to exclude the roads which intrude into the body of the wilderness area.

[1] An appellant seeking reversal of a decision to include land in a WSA must show that the decision appealed from was premised either on a clear error of law or a demonstrable error of fact. Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981).

[2] In a recent decision involving the same inventory unit, we noted that BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherry-picks), thereby excluding such lands from wilderness review and permitting adjacent lands otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy. Walter R. Benoit, 62 IBLA 99 (1982).

[3] Like Martin, Benoit cited the existence of mining districts in the area and their impacts on the suitability of this area as a WSA. However, we noted that five active mines had been excluded by BLM from the Clan Alpine WSA, three of which were located at the end of recognized roads. Both the

^{1/} Appellant requested that the area in S 1/2, sec. 31, T. 20 N., R. 37 E.; secs. 6, 7, 18, 19, and 30, T. 19 N., R. 37 E.; and secs. 1, 11, 12, 14, 19, 23, 24, 25, and 26, T. 19 N., R. 36 E., Mount Diablo meridian, be deleted from any further wilderness review processes.

mines and the roads have been cherry-picked from the WSA. As for appellant's argument that BLM has failed to consider the potential mineral values within the WSA, it is important to stress the distinctions between nature and aims of the inventory phase as distinct from the study phase. The inventory phase was designed to determine and demarcate those areas of the public lands which were possessed of the wilderness criteria established by Congress. Upon the determination that such characteristics are present (or could, in certain circumstances, be developed by natural forces or manual means), the areas are to be designated as WSA's, which are then to be studied for possible inclusion in the wilderness system.

During the study phase, BLM will endeavor to analyze the suitability of each WSA for wilderness designation in conjunction with a whole range of other public land uses that Congress has authorized. Thus, the mineral potential of any tract is to be examined in the study phase to determine the impact that a permanent wilderness designation might have on such values. We note that this analysis is not limited only to mineral values, but embraces the full range of public uses, including grazing and recreational use, with an aim to determining the relative merits of a specific parcel's inclusion in the wilderness system. Indeed, the entire purpose of this study phase is the generation of data sufficient to make informed choices between competing claims to the land. Union Oil Co. (On Reconsideration), *supra* at 170.

[4] Appellant's claim that roads exist within the WSA is unaccompanied by allegations that mechanical improvements or mechanical maintenance has taken place on such routes. As we noted in Conoco, Inc., 61 IBLA 23 (1981), such allegations are necessary to support a finding that a road exists in a WSA. As a criterion in designating a WSA, the word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Although appellant's general allegations provide no basis for reversing the WSA designation for all of the land that was the subject of his protest, appellant asserts that BLM has failed to exclude actual mine sites in secs. 18 and 19, T. 19 N., R. 37 E., and secs. 13 and 24 in T. 19 N., R. 36 E., Mount Diablo meridian. This contention is based on an apparent discrepancy in a WSA map.

A map labeled "Final Inventory Boundary Map 4" indicates that certain areas in these sections have been excluded from the WSA. The particular area which has been excluded has been labeled subunit H. The wilderness inventory described the subunit as follows:

This area of 1,000 acres between the Alpine and Clan Alpine Ranches is isolated by Road 102.8 and two machine-dug ditches. One ditch flows from Cherry Creek south to Alpine Ranch. The other ditch flows out of Florence Canyon to the Alpine Ranch.

The area around the mouth of Florence Canyon contains recent surface mining activity. This area is removed from further study.

This subunit was enlarged by the following amendment:

A road was constructed in the spring of 1980 by mining claimants in Sections 18-20, T 19 N, R 37 E, and Sections 13 and 24, T 19 N, R 36 E. The road, designated NV-03-102.8a, travels parallel to Florence Creek and just north of it, and then swings southwest to mining activity in the NW 1/4 NW 1/4 Section 19.

The district staff geologist has determined that the recent roadbuilding was done on claims having grandfathered uses under the 3802 Regulations on mining in wilderness review areas, and thus is a continuation of existing mining uses which created impacts prior to October 21, 1976, and constitutes a logical progression in the same manner and degree in which the claimants have operated for many years.

Using the northern leg (NV-03-102.8a) as an amended boundary for about .6 mile, about 400 acres in the SW 1/4 Section 18, and the NW 1/4 Section 19, T 19 N, R 37E were added to subunit NV-03-102H. Subunit H has been increased from 1,000 to 1,400 acres, and the proposed Clan Alpine WSA decreased from 193,520 to 193,120 acres. (See Map Amendments for "ROADS" and "SIZE").

Clearly, subunit H was enlarged to exclude areas from the WSA where mining and roadmaking activity had such an impact visible from the surface as to impair the suitability of the land for wilderness reservation. However, the amendment did not purport to exclude from the WSA those areas underlain by subterranean workings indicated on appellant's map which have no impact visible from the surface. It is difficult to determine with precision the relationship of the boundaries of the WSA to the workings on appellant's claims. It is not clear whether any map in the inventory file reflects the amendment of subunit H, although a field map has been provided. The small scale of BLM's maps make comparison with appellant's map difficult. We are concerned, however, whether the boundaries drawn on the field map fully reflect the expansion of subunit H from 1,000 to 1,400 acres. The amendment adds more than the amount of land in two quarter sections, yet the land enclosed by the new boundaries does not appear to be that much greater than the land enclosed by the earlier boundaries.

Our affirmance of the decision below is predicated not on the boundaries shown on the maps but on the description of land in the written amendment, which shows the intent of BLM to exclude those surface workings which substantially impair the suitability of the land for wilderness preservation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

